

**Testimony of**  
**Peter Wagner, Executive Director**  
**Prison Policy Initiative**  
**Before the**  
**Committee on State Affairs and Homeland Security**  
**September 15, 2009**

Good morning Mr. Chair and Committee members. I thank you for the opportunity to testify today. My name is Peter Wagner and I am an attorney and Executive Director of the Prison Policy Initiative. For the last 9 years I have been conducting legal and demographic research on how the Census Bureau's method of counting people in prison negatively impacts the political redistricting process. In 2002, I wrote a report called *Importing Constituents: Prisoners and Political Clout in New York* which was the first report to quantify the unintentional harm to democracy caused by a state's practice of drawing legislative district lines based on Census Bureau counts of prisoners as residents of the prison town. In 2008, I co-authored a report *Importing Constituents: Prisoners and Political Clout in Wisconsin*<sup>1</sup> that examined how prison counting affects districting in both the state legislature and county boards in your state.

Wisconsin law says that incarceration does not change a residence<sup>2</sup>, but the Census Bureau counts incarcerated people as residents of the Census block that contains the prison. Wisconsin currently relies on Census Bureau data to draw state and local legislative districts, and the result is a significant and unconstitutional transfer of political clout to state and local districts that contain prisons. Ten percent of one state legislative district is incarcerated disenfranchised residents of other parts of the state. In nine counties and 3 cities, the impact on local county boards and city councils is even larger.

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<sup>1</sup> John Hejduk and Peter Wagner, *Importing Constituents: Prisoners and Political Clout in Wisconsin*, available at <http://www.prisonersofthecensus.org/wisconsin/>

<sup>2</sup> Wisconsin, like most states, says that prison is not a residence. A legal residence is the place that people choose to be and do not intend to leave:

"The residence of a person is the place where the persons habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return." Wis. Stat. § 6.10 at P 1 (2002).

The statutes are explicit that when people leave home temporarily with an intent to return, they retain their former residence:

"A person shall not lose residence when the person leaves home and goes into another state or county, town, village or ward of this state for temporary purposes with an intent to return." Wis. Stat. § 6.10 at P 5 (2002).

In Waupun City, for example, a large prison is 79% of one district, giving every resident of that district 5 times the political power as residents of other parts of the city.

The obvious solution is unfortunately not an option at this time. Ideally, the U.S. Census Bureau would change where it counts incarcerated people. They should be counted as residents of their home — not prison — addresses. Unfortunately, insufficient time remains before the 2010 Census to change where incarcerated people are counted. But AJR 63 is a critical, state-based, interim solution that would eliminate the majority of the vote dilution caused by counting prisoners in the wrong location. It functions to require state and local redistricting bodies to remove disenfranchised incarcerated felons from the population base used for redistricting. This would not return incarcerated people to their legal residence, but it would eliminate the large and unconstitutional vote enhancement created by counting them in the wrong communities of interest in the wrong part of the state.

This state-based solution is patterned after actions taken in other states and extends the concept to apply to the state legislature as well. More than 100 rural counties and other forms of local government currently ignore the prison populations when drawing districts or designing weighted voting systems. In Mississippi, the attorney general directs counties to do so. In Colorado, state law requires counties to ignore the prison populations. Virginia law encourages counties with large prison populations to ignore the prison populations, and New Jersey law requires school districts to be drawn without regard to prison populations.

The federal courts have explicitly held that while states must redistrict each decade, they are not required to use Census data to do so.<sup>3</sup> The Supreme Court said in *Burns v. Richardson* 384 U.S. 73, 92 (1966) that states are not required to include “persons denied the vote for conviction of crime” in apportioning their legislatures.

### Conclusion

The Census Bureau’s outdated method of assigning residence to people in prison creates a large problem for democracy in Wisconsin. The problem was left uncorrected in the last redistricting cycle because the importance of the issue was discovered only shortly before the Census began. Today, we have the benefit of advance notice. If

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<sup>3</sup> In *Bethel Park v. Stans*, 449 F. 2d 575 (C.A. 3, 1971) the city of Philadelphia and a Pennsylvania congressman sued the Census Bureau for counting military personnel, students and prisoners at their temporary addresses instead of their home addresses, because the plaintiffs feared a loss of representation. The court stated that “Although a state is entitled to the number of representatives in the House of Representatives as determined by the federal census, it is not required to use these census figures as a basis for apportioning its own legislature.” *Bethel Park v. Stans*, 449 F. 2d 575, 583 (C.A. 3, 1971). Two years later, when faced with a similar issue, the Supreme Court rejected Virginia’s argument that it was compelled to use the Census Bureau’s assignment of residences to military personnel when drawing state legislative districts. *Mahan v. Howell*, 410 U.S. 315, 331 (1973).

Wisconsin passes AJR 63, the state and counties will be able to draw districts that give residents near prisons and residents far from prisons the same access to government.

Thank you for the opportunity to participate in your reexamination of the redistricting process in Wisconsin. I would be happy to answer any questions that you may have.

*Appendix A. Incarcerated populations in Wisconsin Assembly districts.*

<u>District</u>	<u>Representative (2008)</u>	<u>Party</u>	<u>Prisoners (state and federal)</u>	<u>Black prisoners</u>	<u>Latino Prisoners</u>	<u>District population</u>	<u>Population Deviation</u>	<u>Percent of district that is incarcerated</u>	<u>Percent deviation without prisoners</u>	<u>White population</u>	<u>Black population</u>	<u>Latino population</u>	<u>Percent Black population incarcerated</u>	<u>Percent Latino population incarcerated</u>
1	Garey Bies	R	120	46	4	53,973	-206	0.2%	-0.6%	52,675	165	473	27.9%	0.8%
2	Frank Lasee	R	0	0	0	54,191	12	0%	0%	52,290	169	701	0%	0%
3	Alvin Ott	R	0	0	0	54,121	-58	0%	-0.1%	52,206	205	540	0%	0%
4	Phil Montgomery	R	1,936	660	46	54,428	249	3.6%	-3.1%	51,246	1,039	627	63.5%	7.3%
5	Tom Nelson	D	0	0	0	53,950	-229	0%	-0.4%	48,847	157	712	0%	0%
6	Gary Tauchen	R	0	0	0	54,168	-11	0%	0%	51,331	110	665	0%	0%
7	Margaret Krusick	D	0	0	0	54,176	-3	0%	0%	48,990	726	2,709	0%	0%
8	Pedro A. Colón	D	0	0	0	54,074	-105	0%	-0.2%	12,942	3,754	33,602	0%	0%
9	Josh Zepnick	D	0	0	0	54,204	25	0%	0%	33,470	1,944	15,404	0%	0%
10	Annette Williams	D	0	0	0	54,312	133	0%	0.2%	11,101	39,163	2,693	0%	0%
11	Jason Fields	D	0	0	0	53,971	-208	0%	-0.4%	12,981	37,112	1,425	0%	0%
12	Frederick P. Kessler	D	0	0	0	54,245	66	0%	0.1%	28,520	21,205	1,733	0%	0%
13	David Cullen	D	0	0	0	53,940	-239	0%	-0.4%	48,221	2,103	1,961	0%	0%
14	Leah Vukmir	R	0	0	0	54,596	417	0%	0.8%	50,507	1,100	1,093	0%	0%
15	Tony Staskunas	D	49	38	3	53,811	-368	0.1%	-0.8%	49,891	664	1,899	5.7%	0.2%
16	Leon Young	D	83	60	3	54,349	170	0.2%	0.2%	11,821	36,992	3,029	0.2%	0.1%
17	Barbara Toles	D	0	0	0	54,204	25	0%	0%	14,223	36,201	1,393	0%	0%
18	Tamara D. Grigsby	D	0	0	0	54,136	-43	0%	-0.1%	12,393	34,236	2,692	0%	0%
19	Jon	D	49	39	2	54,272	93	0.1%	0.1%	45,019	2,802	3,719	1.4%	0.1%

	Richard s													
20	Christin e Sinicki	D	0	0	0	54,217	38	0%	0.1%	48,392	591	3,291	0%	0%
21	Mark Honadel	R	0	0	0	54,302	123	0%	0.2%	49,088	879	2,514	0%	0%
22	Sheldon Wasser man	D	0	0	0	54,361	182	0%	0.3%	47,086	3,995	1,087	0%	0%
23	Jim Ott	R	0	0	0	53,867	-312	0%	-0.6%	42,179	8,554	1,145	0%	0%
24	Suzann e Jeskewi tz	R	0	0	0	53,848	-331	0%	-0.6%	51,637	728	597	0%	0%
25	Bob Ziegelb auer	D	0	0	0	53,825	-354	0%	-0.7%	50,578	268	1,076	0%	0%
26	Terry Van Akkeren	D	0	0	0	54,043	-136	0%	-0.3%	46,323	509	3,071	0%	0%
27	Steve Kestell	R	1,24 0	637	99	53,907	-272	2.3%	-2.8%	51,788	807	595	78.9%	16.6%
28	Ann Hraychu ck	D	0	0	0	54,404	225	0%	0.4%	52,617	168	437	0%	0%
29	John Murtha	R	103	42	5	54,356	177	0.2%	0.1%	52,271	280	430	15.0%	1.2%
30	Kitty Rhoades	R	0	0	0	54,234	55	0%	0.1%	52,686	236	504	0%	0%
31	Stephen Nass	R	0	0	0	54,423	244	0%	0.5%	52,129	247	1,393	0%	0%
32	Thomas Lothian	R	0	0	0	54,103	-76	0%	-0.1%	48,364	465	4,547	0%	0%
33	Scott Newco mer	R	0	0	0	53,760	-419	0%	-0.8%	51,435	468	998	0%	0%
34	Dan Meyer	R	124	47	5	54,275	96	0.2%	-0.1%	51,060	193	413	24.4%	1.2%
35	Donald Friske	R	0	0	0	54,165	-14	0%	0%	52,756	195	462	0%	0%
36	Jeffrey L. Mursau	R	0	0	0	54,178	-1	0%	0%	46,541	238	527	0%	0%
37	Andy Jorgens en	D	115	54	3	54,045	-134	0.2%	-0.5%	51,321	252	1,757	21.4%	0.2%
38	Joel Kleefisc h	R	0	0	0	54,602	423	0%	0.8%	52,245	184	1,495	0%	0%
39	Jeff Fitzgera ld	R	1,47 2	670	97	54,615	436	2.7%	-1.9%	51,824	836	1,391	80.1%	7.0%
40	Kevin	R	0	0	0	53,966	-213	0%	-0.4%	52,416	143	749	0%	0%

Notes: Red Granite Prison, wholly in  
the District, not reflected here

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41	Joan Ballweg	R	0	0	0	54,242	63	0%	0.1%	52,320	168	1,176	0%	0%
42	J.A. Hines	R	2,052	834	319	54,206	27	3.8%	-3.7%	50,941	1,038	1,136	80.3%	28.1%
43	Kim Hixson	D	0	0	0	53,869	-310	0%	-0.6%	50,367	952	1,732	0%	0%
44	Mike Sheridan	D	0	0	0	54,264	85	0%	0.2%	50,614	1,115	1,518	0%	0%
45	Chuck Benedict	D	0	0	0	54,134	-45	0%	-0.1%	43,429	5,901	3,584	0%	0%
46	Gary Hebl	D	0	0	0	54,206	27	0%	0%	51,193	1,112	947	0%	0%
47	Eugene Hahn	R	0	0	0	54,313	134	0%	0.2%	52,440	316	862	0%	0%
48	Joseph T. Parisi	D	0	0	0	53,949	-230	0%	-0.4%	48,776	2,144	1,524	0%	0%
49	Phil Garthwaite	D	167	104	12	54,133	-46	0.3%	-0.4%	53,028	298	294	34.9%	4.1%
50	Sheryl Albers	R	0	0	0	54,355	176	0%	0.3%	52,589	176	680	0%	0%
51	Steve Hilgenberg	D	0	0	0	54,274	95	0%	0.2%	53,092	152	582	0%	0%
52	John F. Townsend	R	979	426	42	54,300	121	1.8%	-1.6%	50,739	904	1,366	47.1%	3.1%
53	Carol Owens	R	5,131	2,098	220	54,036	-143	9.5%	-9.7%	49,866	2,342	865	89.6%	25.4%
54	Gordon Hintz	R	0	0	0	54,052	-127	0%	-0.2%	50,400	523	876	0%	0%
55	Dean Kaufert	R	0	0	0	53,872	-307	0%	-0.6%	50,477	360	1,657	0%	0%
56	Roger Roth	R	0	0	0	54,199	20	0%	0%	51,837	302	967	0%	0%
57	Steve Wieckert	R	0	0	0	53,921	-258	0%	-0.5%	48,623	651	1,381	0%	0%
58	Pat Strachota	R	0	0	0	53,922	-257	0%	-0.5%	52,355	166	752	0%	0%
59	Daniel LeMahieu	R	0	0	0	54,138	-41	0%	-0.1%	52,728	146	658	0%	0%
60	Mark Gottlieb	R	0	0	0	53,975	-204	0%	-0.4%	52,301	268	712	0%	0%
61	Robert Turner	D	404	206	42	54,305	126	0.7%	-0.5%	32,235	12,773	8,329	1.6%	0.5%
62	Cory Mason	D	1,405	754	144	54,049	-130	2.6%	-2.8%	41,965	6,519	4,467	11.6%	3.2%

63	Robin J. Vos	R	251	90	70	54,171	-8	0.5%	-0.5%	50,866	905	1,440	9.9%	4.9%
64	James Kreuser	D	0	0	0	54,480	301	0%	0.6%	41,310	5,362	6,441	0%	0%
65	John Steinbrink	D	108	61	10	54,017	-162	0.2%	-0.5%	47,080	2,323	3,192	2.6%	0.3%
66	Samantha Kerkman	R	0	0	0	54,108	-71	0%	-0.1%	51,159	478	1,685	0%	0%
67	Jeffrey Wood	R	0	0	0	54,033	-146	0%	-0.3%	53,037	90	274	0%	0%
68	Terry Moulton	R	0	0	0	54,140	-39	0%	-0.1%	50,796	321	444	0%	0%
69	Scott Suder	R	0	0	0	54,387	208	0%	0.4%	53,216	90	551	0%	0%
70	Amy Sue Vruwink	D	0	0	0	53,885	-294	0%	-0.5%	52,251	161	459	0%	0%
71	Louis J. Molepske, Jr.	D	0	0	0	54,495	316	0%	0.6%	51,086	267	1,130	0%	0%
72	Marlin Schneider	D	0	0	0	54,257	78	0%	0.1%	51,810	219	665	0%	0%
73	Frank Boyle	D	72	29	1	54,507	328	0.1%	0.5%	51,597	369	400	7.9%	0.3%
74	Gary E. Sherman	D	72	37	0	53,867	-312	0.1%	-0.7%	46,775	141	450	26.2%	0%
75	Mary Hubler	D	0	0	0	53,981	-198	0%	-0.4%	52,277	115	512	0%	0%
76	Terese Berceau	D	0	0	0	54,619	440	0%	0.8%	44,637	3,872	2,495	0%	0%
77	Spencer Black	D	0	0	0	54,158	-21	0%	0%	44,184	2,027	1,958	0%	0%
78	Mark Pocan	D	0	0	0	54,105	-74	0%	-0.1%	40,877	5,269	3,919	0%	0%
79	Sondy Pope-Roberts	D	705	398	31	54,562	383	1.3%	-0.6%	49,842	1,617	1,280	24.6%	2.4%
80	Brett H. Davis	R	0	0	0	53,978	-201	0%	-0.4%	52,675	230	515	0%	0%
81	David Travis	D	0	0	0	53,823	-356	0%	-0.7%	47,812	2,535	1,525	0%	0%
82	Jeffrey Stone	R	0	0	0	54,545	366	0%	0.7%	49,919	1,658	1,369	0%	0%
83	Scott Gunderson	R	0	0	0	54,262	83	0%	0.2%	52,683	183	817	0%	0%
84	Mark Gundrum	R	0	0	0	54,030	-149	0%	-0.3%	51,142	313	1,077	0%	0%

85	Donna J. Seidel	D	0	0	0	54,443	264	0%	0.5%	48,315	312	499	0%	0%
86	Jerry Petrowski	R	0	0	0	53,845	-334	0%	-0.6%	51,952	159	324	0%	0%
87	Mary Williams	R	0	0	0	54,025	-154	0%	-0.3%	52,825	149	387	0%	0%
88	James Soletski	D	0	0	0	54,095	-84	0%	-0.2%	43,816	1,052	5,409	0%	0%
89	John Nygren	R	0	0	0	54,407	228	0%	0.4%	53,069	163	400	0%	0%
90	Karl Van Roy	R	0	0	0	54,207	28	0%	0.1%	47,740	765	1,873	0%	0%
91	Barbara Gronemus	D	0	0	0	54,596	417	0%	0.8%	53,683	96	381	0%	0%
92	Terry Musser	R	888	338	39	54,434	255	1.6%	-1.2%	50,814	653	810	51.8%	4.8%
93	Jeff Smith	D	0	0	0	54,340	161	0%	0.3%	51,859	383	502	0%	0%
94	Michael Huebsch	R	0	0	0	54,135	-44	0%	-0.1%	52,083	277	395	0%	0%
95	Jennifer Shilling	D	0	0	0	54,625	446	0%	0.8%	49,848	951	613	0%	0%
96	Lee A. Nerison	R	292	156	16	54,308	129	0.5%	-0.3%	52,873	296	679	52.7%	2.4%
97	Bill Kramer	R	0	0	0	54,411	232	0%	0.4%	46,775	872	5,080	0%	0%
98	Rich Zipperer	R	0	0	0	54,039	-140	0%	-0.3%	50,917	421	630	0%	0%
99	Don Pridemore	R	0	0	0	54,024	-155	0%	-0.3%	52,305	329	727	0%	0%

## Sources and methodology

### Representative (2008)

The incumbent legislator as of January 2008

### Party

Party of incumbent

### Prisoners (state and federal)

This is the number of state and federal prisoners incarcerated in the district. The Census publishes the number of incarcerated people in each block in Summary File 1, Table P37. We then identified which incarcerated populations in each block were state or federal prisoners.

### Black prisoners



The Census publishes the race of the correctional population at the tract level in Summary File 1, Table PCT17B and at the block level for the total population in Table P7. We used these two data sources to identify the number of Black prisoners incarcerated in state or federal prisons in blocks in each district.

### **Latino Prisoners**

The Census publishes the ethnicity of the correctional population at the tract level in Summary File 1, Table PCT17H and at the block level for the total population in Table P11. We used these two data sources to identify the number of Latino prisoners incarcerated in state or federal prisons in blocks in this district.

### **District population**

This is the district population reported in Statistical Analysis of Wisconsin Legislative Districts, published by the Wisconsin Legislative Reference Bureau.

### **Population deviation**

This is the difference between the ideal district size of 54,179 and the actual district size.

### **Percent of district that is incarcerated**

This is the number of state and federal prisoners divided by the population of the district.

### **Percent deviation without prisoners**

This is the size of the population deviation if prisoners had not been counted as residents of the prison district. It was calculated by taking the district population, subtracting the prison population and dividing the result by the ideal district population of 54,179.

### **White population**

This is the number of people who were "Non-Hispanic White" as reported in Statistical Analysis of Wisconsin Legislative Districts, published by the Wisconsin Legislative Reference Bureau.

### **Black population**

This is the number of people who were "Non-Hispanic Black" as reported in Statistical Analysis of Wisconsin Legislative Districts, published by the Wisconsin Legislative Reference Bureau.

### **Latino population**

This is the number of people who were "Hispanic or Latino" as reported in Statistical Analysis of Wisconsin Legislative Districts, published by the Wisconsin Legislative Reference Bureau.

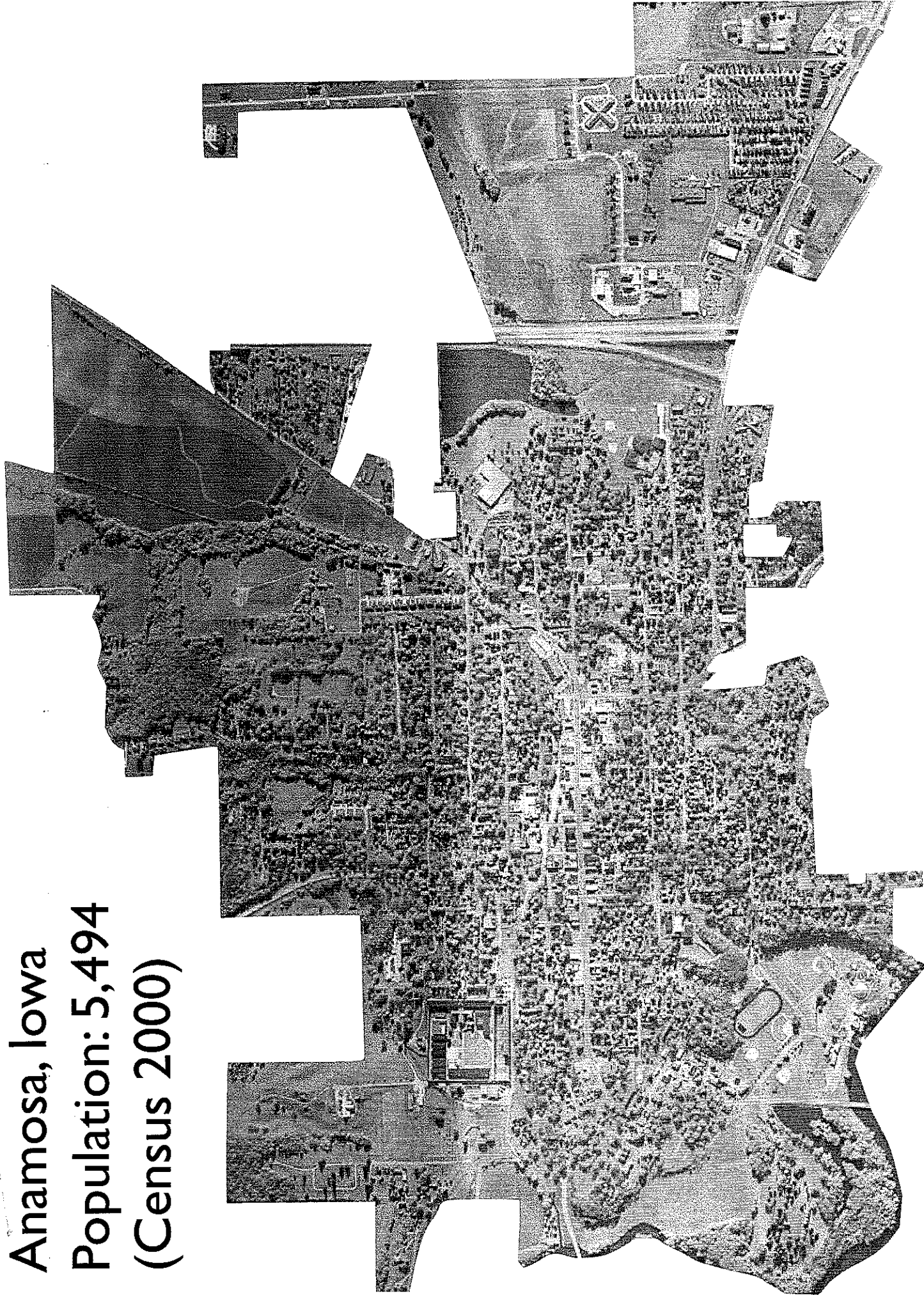
### **Percent Black population incarcerated**

This is the number of Blacks in state or federal prison divided by the number of Blacks in the district.

**Percent Latino population incarcerated**

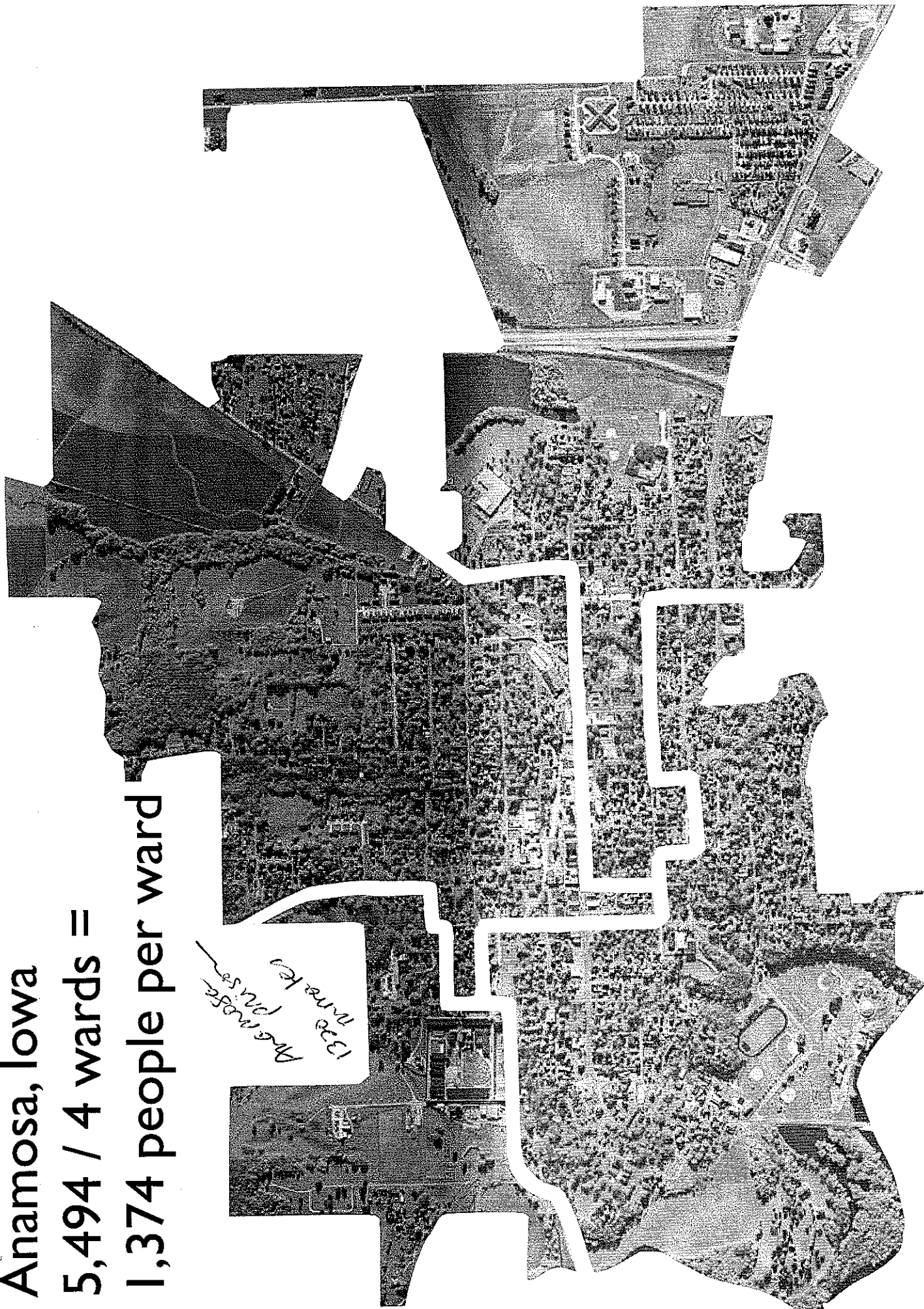
This is the number of Latinos in state or federal prison divided by the number of Latinos in the district.

Anamosa, Iowa  
Population: 5,494  
(Census 2000)



Anamosa, Iowa  
5,494 / 4 wards =  
1,374 people per ward

Anamosa  
1374 people



# Anamosa State Penitentiary

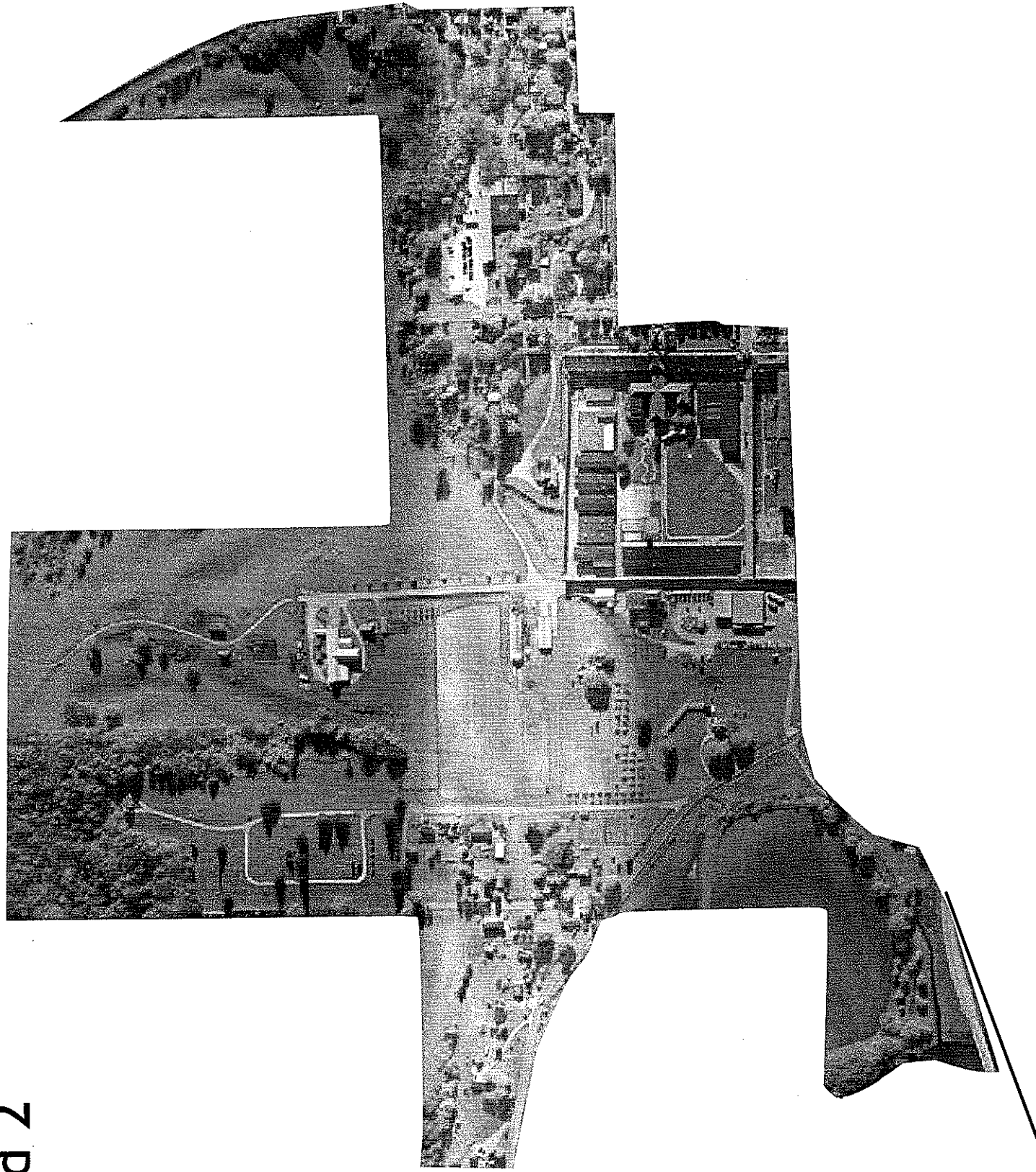
## 1,321 prisoners in

### Ward 2

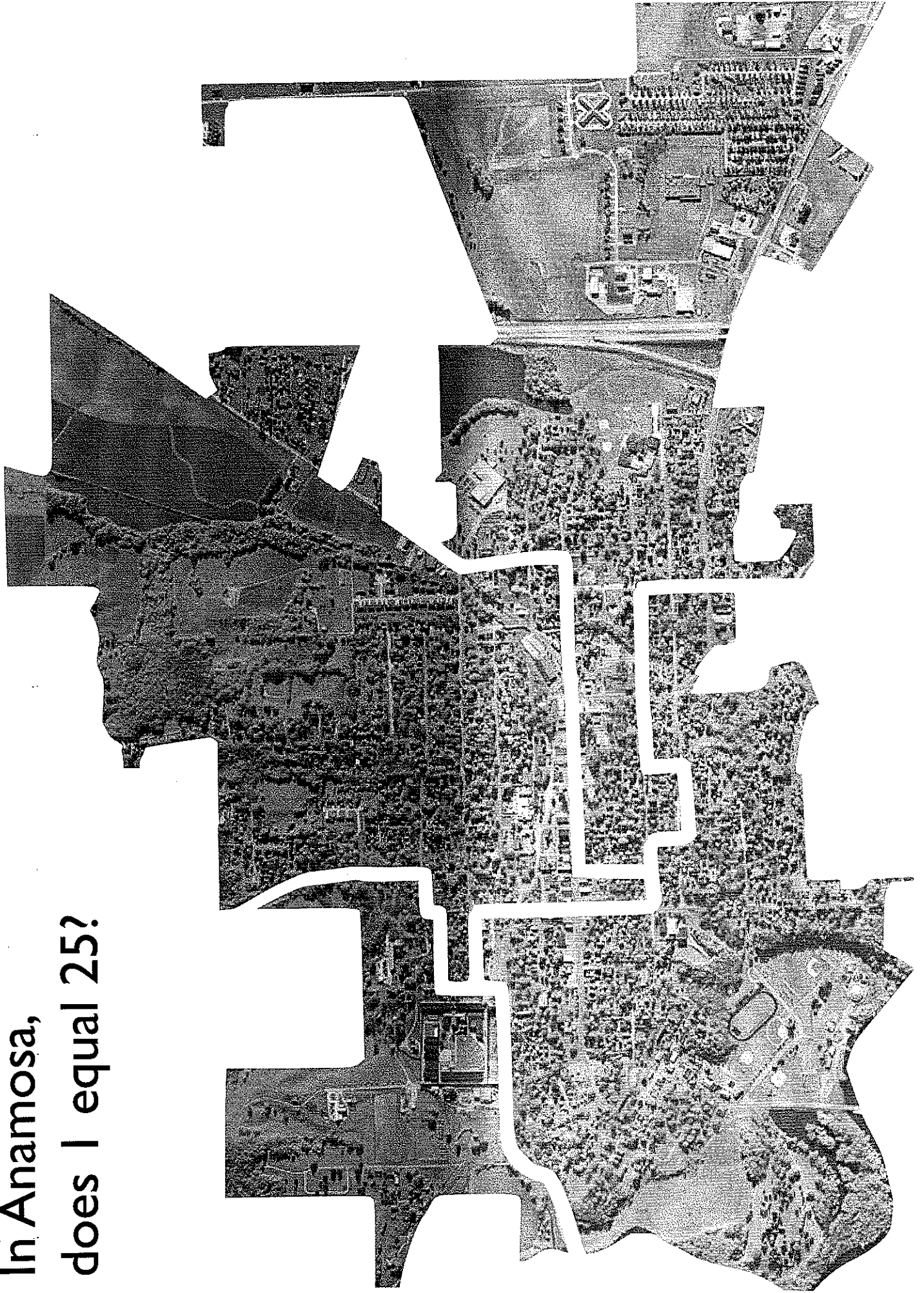




# Ward 2



In Anamosa,  
does 1 equal 25?





*Wild Goose Center of Wisconsin*



# City of Waupun

201 E. Main Street  
WAUPUN, WISCONSIN 53963  
Phone: 920-324-7900  
Fax: 920-324-7939

Date: September 24, 2009  
To: Representative Ballweg  
From: Edward Madere, Interim City Administrator  
Copy to: Mayor Steger  
Vincent Williams, Research Assistant  
Re: Impact of AJR 63 on the City of Waupun

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This memo is in response to your inquiry and request to provide your office with preliminary information on the potential impact of AJR 63 on the City of Waupun. We regret that a fuller presentation cannot be made at this time. However, the rapid pace of the Assembly Committee handling this matter along with the temporary absence of the City's Public Safety Chiefs prevents this.

The corporate limits of the City of Waupun house three correctional institutions: State Prison, Dodge County Correctional, and John C. Burke Center. Nearby is Fox Lake Correctional.

From the short time given we are able to offer the following related to Police Department activities:

- Police Department staff are routinely involved with local agencies to include Dodge County Sheriff, Fond du Lac County Sheriff, Brooks Ambulance Service, Department of Natural Resources, and the State Police in working with the Department of Corrections on matters pertaining to securing the institutions, transportation, citizen safety, and other potential emergencies.
- The Police Department works closely with Waupun Memorial Hospital to develop procedures for dealing with potential prison related emergencies. The most recent example is planning the possibility of a H1N1 pandemic affecting the prison population. It should be noted that the Waupun Memorial Hospital has a secure wing strictly for prisoners.



- The City, in cooperation with the correctional institutions, has had a long standing policy of accompanying ambulance personnel and correctional officers on medical transports to Waupun Memorial Hospital. This involves providing back up security while inmates are being treated in the Emergency Room. This has resulted in numerous hours of watching/monitoring security while risky inmates are being treated.
- Historically, the City's Police have been involved in searching for, securing and taking into custody escaped inmates. One of these search activities involved the Police Department's K-9, during which the dog fell down a flight of stairs and was killed.
- Routinely, the Waupun Police Department must deal with prison related parking issues, accidents, thefts from vehicles, visitors bringing drugs into the prison (investigated by the Police Department), employee strikes, and inmate riots.
- Many visitors have warrants, expired plates, no valid driver's licenses, revoked licenses, and OWI related charges of the person they are going to visit.
- In addition to the above, the prisons result in a vast array of clientele connected to the inmates that visit and live in Waupun. This has on occasion resulted in very serious safety concerns. In the past year, a man recently released from Fox Lake Correctional passed through Waupun while visiting others at Fox Lake Correctional. While in Waupun he stole several long guns from Holliday Food and Sport. Another earlier example was the robbery of the Sentry Store by three armed men. This was directly related to prison.

The above information regarding City of Waupun Police Department activities related to the prisons is not intended to be all inclusive. Additionally, as noted earlier, the City of Waupun Fire Department also has significant responsibility related to the prisons. That information may be provided following the return and input from the City's fire chief.

Thank you for the opportunity to present this information to you. Please let me know if you have any questions.



# JOAN BALLWEG

WISCONSIN STATE REPRESENTATIVE

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41<sup>ST</sup> ASSEMBLY DISTRICT

To: Committee on State Affairs and Homeland Security  
From: Rep. Joan Ballweg  
Date: September 24, 2009  
Re: AJR 63 Impact on Local Government

I would like to share with you some comments from local and county officials regarding AJR 63. Unfortunately the time between the Public Hearing and Executive Session has not allowed enough time to have all interested parties respond.

Following are the comments received thus far:

## **Waushara County Sheriff David Peterson**

At the present time the Village of Redgranite handles daily concerns associated with the Redgranite prison.

Several county agencies including the Sheriff's Office however are part of their disturbance plan. This means that we spend time planning for an event that hopefully will not occur. If it does our office will be the first responder with as many officers both on-duty and off that we can muster.

Our jail population which includes state inmates impacts us as I previously mentioned to Vince. In addition we also are responsible for their medical and mental health issues which impact the county. We also feel it is necessary to keep our officers trained beyond minimum requirements to ensure their safety as well as that of the inmates and community.

Prison/Jail populations do impact local units of government: One issue that we have had is the excessive amount of trash normally disposed of as household waste gets flushed into the sanitary system. This trash causes maintenance issues in pumps, grinders and lift stations as well as the sewage plant itself.

Planning for emergency evacuations and or pandemic flu incidents is an ongoing concern that is difficult when dealing with inmates and their supervision.

Volume of solid waste in need of disposal increases because of inmate population and those associated fees recently were dramatically increased.  
(NOTE the Waushara County jail houses state inmates also)

**Waushara County Clerk John Benz**

Since the Corrections inmate count is CURRENTLY being used in the County's population census, surely any change would be detrimental to the County. Any and all items that refer to population from shared revenue (not that there's much of THAT anymore) to free & reduced school lunches, etc. would be affected. Most grant applications usually request population figures also.

**Fond du Lac County Executive Allen Buechel**

I would have serious concerns with our state not counting incarcerated individuals during the census.

There are state and federal funding formulas that are based on population that could affect the amount of revenue including state shared revenue if these individuals were not counted. Counties and municipalities provide service to our prisons including police and fire protection, emergency management services, mental health commitments and other court services. While all of that affects the workload of those agencies I cannot quantify the cost of providing these services to Taycheedah. From my experience there have been grants and other funding that were based on population. At this point I cannot think of other specific funding formulas, if I do in the next few days I will forward them to you. Also, not counting the large number of people in prison in the state may affect the number of congressman that represent the state of WI in the future.

**Fond du Lac County District Attorney Dan Kaminsky**

I'm not sure about this. We certainly have additional considerations at the DA's office in that we get notifications of impending offender releases, have community response teams for certain types of offenders (corroboration between law enforcement, probation/parole, DA and others), and have additional residents in the form of correctional officers, probation and parole staff, etc.

I'm also not sure if this is intended to apply to prisoners released on supervision. If so, it certainly fails to account for those portions of the community.

**Village of Redgranite Clerk Madonna Berube**

I spoke with some Redgranite Village Board members before our monthly meeting last week and their was concern about the suggested change to the rules for the census to exclude incarcerated individuals. They were uneasy that the change could affect the village's shared revenue payment from the state. As I mentioned last week our police department responds frequently to the Redgranite Correctional Institution for incidents between inmates, between inmates and guards, investigation of the incidents and preparation of case work for referral to the Waushara County District Attorney.

Although we receive compensation by way of a Municipal Services Payment for our police and fire services, village board members contacted were against the change to the census rules.

**Redgranite Village Board Member Betty Eannelli**

Our village clerk shared with me the email you sent on 9/15 regarding the possible resolution to the State constitution. I am very concerned if incarcerated individuals are not counted in the census.

Yes, communities are impacted in some way by prisons. We have no complaints about having the prison in our village but we are required to furnish police services as needed such as investigations etc. The monthly service can be as much as 50 to 100 hours provided by our law enforcement.

When we applied to have the prison located in Redgranite, information given us was our shared revenue would be increased estimated to be about \$28.00 per inmate. That formula has since changed and receive assistance annually using a different formula but it would have an impact on us should this be discontinued. Who would be paying our officers to do the investigations, etc?

We urge you to support the continuance of counting the inmates.

**Winnebago County Executive Mark Harris**

We believe that some family members move to the area to be closer to their incarcerated family. This probably generates some human service and possibly some law enforcement costs. I do not see why incarcerated individuals would not be counted. We count individuals from birth to death wherever they actually reside. We count minors and foreign nationals that cannot vote. Why not prisoners?

**City of Waupun**

Attached comments relating to Police Department activities. Additional information not available due to department heads on vacation or vacancy.

Of the six city wards, wards 2, 3, 4 each have an institution. It is unknown if there has ever been a concern with the population of the prison being unfair relating to representation in the City.



## Legislative Fiscal Bureau

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September 16, 2009

TO: Representative Frederick Kessler  
Room 302 North, State Capitol

FROM: Jon Dyck, Fiscal Analyst

SUBJECT: Impact of Assembly Joint Resolution 63 on State Aid Program Distributions

At your request, this memorandum provides information on the impact of Assembly Joint Resolution 63 on state aid program distributions. Specifically, you asked if AJR 63 would affect the amount of state aids received by any local unit of government.

AJR 63 proposes an amendment to the state constitution (first consideration) to specify that incarcerated felons who are disenfranchised by law shall be excluded from the population counts used for the purposes of creating districts for the election of statutory officers of any municipality or other unit of government in the state. The proposed amendment would affect only the process of creating election districts and, therefore, would not necessarily impact state aid programs, whose formulas are generally established by statute. Population estimates for state aid purposes are determined by the Department of Administration under section 16.96 of the statutes. Under s. 16.96(d), these estimates are required to be based upon the last federal census, which counts incarcerated felons in the municipality where they are incarcerated. Therefore, unless this statute is changed by the Legislature, the official state population estimates for state aid purposes would be unchanged by the AJR 63 language.

Historically, the most significant state aid program using population as a basis for payments was the shared revenue program. However, since 2004, the formula for that program (now the county and municipal aid program) has been suspended, meaning that neither a local government's population nor other factors used in the previous program are relevant for the distribution of aids.

There are a few smaller state aid programs that continue to include population as a component of their aid formulas. For instance, the formulas for several public health-related aid programs and local transportation assistance programs are based, in part, on population. As noted

above, these formulas are established by statutory formulas that would not be affected by the proposed constitutional amendment.

I hope this information is helpful. If you have further questions, please contact me.

JD/le



STATE REPRESENTATIVE  
**FREDERICK P. KESSLER**

WISCONSIN STATE ASSEMBLY

12TH DISTRICT

**FOR IMMEDIATE RELEASE**

**For Further Information Contact:**

Representative Frederick P. Kessler

608.266.5813

June 18, 2009

**Rep. Kessler Introduces Census Correction Amendment**  
**Would remove incarcerated, disenfranchised felons from electoral districting data**

MADISON – Rep. Frederick Kessler, D-Milwaukee, today introduced a state Constitutional amendment to change the way state and local electoral districts are drawn. If enacted, the amendment would direct that incarcerated felons, who may not vote, also not be counted toward the population of the districts where their prisons are located. Joining Kessler in proposing the amendment are Reps. Spencer Black, Tamara Grigsby, Robert Turner and Polly Williams.

The federal Census Bureau regards prison inmates as “residents” of the prisons where they are held, regardless of any permanent home address and regardless of the length of sentence. This means that a person arriving at Dodge Correctional Institution on April 1, 2010, (the Census date), is counted as a resident of Waupun, even if that person will serve only a year in prison and even if that person lived in Superior before being arrested and plans to return there upon release.

Wisconsin uses federal census data to draw its electoral districts, which must contain an equal number of persons. The Census Bureau policy means that certain districts in Wisconsin in fact have significantly fewer voting-eligible residents than other districts, even though on paper they appear to have equal population. For example, nearly 10% of the population of the 53<sup>rd</sup> Assembly District consists of prisoners who cannot vote and are unlikely to have any connection to the communities of the District. This malapportionment effectively turns those who happen to live near prisons into “supervoters”: they have more powerful votes and more representation in the Legislature than other Wisconsinites.

The problem is even more pronounced on the local level. Because county and municipal board districts are smaller, the inmate population of even one prison can make up a large percentage of a given district. In Waupun’s Third Aldermanic District, for example, inmates make up 79% of the population. One vote in this district is equivalent to five votes in a district without a prison.

Kessler’s amendment would allow federal census data to continue to be used, but would require that the data be altered to remove disenfranchised, incarcerated felons before districting maps are drawn. The amendment would apply to Assembly and Senate districts as well as county and local board districts. The United States Supreme Court has held, in *Burns v. Richardson*, 384 U.S. 73, 92 (1966), that states need not include disenfranchised felons in the data used to draw district maps.

At this time, no other state requires the exclusion of prisoners from districting data for state legislative districts, though Oregon, New York and Texas all have legislation pending on the subject. In addition, Virginia, Colorado and New Jersey require or allow correction of census data regarding inmates for the districting of certain local boards, and some municipalities and counties around the nation, and particularly in New York State, alter census data to remove prisoners on their own authority.

More information on the effect of prison inmates on redistricting can be found at [www.prisonersofthecensus.com](http://www.prisonersofthecensus.com).

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